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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A144480

v.

**(Solano County
Super. Ct. No. FCR303573)**

PAUL G. CLARK,

Defendant and Appellant.

_____/

Appellant Paul G. Clark appeals from an order denying his petition for resentencing pursuant to Penal Code section 1170.18.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are taken from the preliminary hearing transcript.

In October 2013, a Sears store clerk told Fairfield Police Officer Michael Blacklock that Clark came to the store's cash register with two televisions and three tablet computers using a "fraudulent Texas identification card" in the name of Daniel Stone and Sears account in Stone's name. Stone did not give Clark permission to use his identification card or Sears account. The value of the items Clark attempted to purchase

¹ All further statutory references are to the Penal Code.

was \$4,274. The Sears clerk became suspicious and called Stone, prompting Clark to leave the store. Officer Blacklock arrested Clark in the Sears parking lot.

The People charged Clark with various crimes arising out of the incident, including second degree commercial burglary (§ 459) and identity theft (§ 530.5, subd. (a)). Clark pled no contest to second degree commercial burglary (§ 459) and admitted three prior prison terms (§ 667.5, subd. (b)). In July 2014, and pursuant to the plea agreement, the court sentenced Clark to three years in state prison, imposed various fines and fees, and awarded custody credits.

In December 2014, Clark moved to recall his sentence and for resentencing pursuant to section 1170.18, subdivision (a). Clark argued resentencing was appropriate because section 459.5,² enacted in November 2014, classified shoplifting as a misdemeanor. The People opposed the petition; they argued the value of the property Clark intended to steal was over \$4,000. At a hearing on the petition, a Sears asset protection manager testified Clark used false identification and a false Sears account to purchase various items with a value of \$4,274.74. The court admitted a Sears receipt showing the value of the items. Defense counsel argued there was no evidence Clark “executed any type of receipt or written agreement with respect to the purchase of the items. . . . Without that signature, there is no evidence about the cumulative value” of the items. The court rejected the argument and denied the resentencing petition. It concluded the evidence was “more than adequate” to show Clark intended to steal property with a value exceeding \$950.

Clark appealed, and we appointed counsel to represent him. Appointed counsel filed an opening brief raising no issues pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel informed Clark he had the right to file a supplemental brief on his own behalf but Clark declined to do so.

² Section 459.5, subdivision (a) classifies shoplifting as a misdemeanor “where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950).”

DISCUSSION

In November 2014, California voters enacted Proposition 47, entitled “the Safe Neighborhoods and Schools Act.” (Prop. 47, approved Nov. 4, 2014, eff. Nov. 5, 2014.) Proposition 47 “created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offence that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. [Citation.] A person who satisfies the criteria in section 1170.18 shall have his or her sentence recalled and be ‘resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).)” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1092.) Section 47 added section 459.5, which classifies shoplifting as a misdemeanor “where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950).” (§ 459.5, subd. (a).)

We have reviewed the entire record pursuant to *Wende* and find no arguable issues on appeal. (*People v. Kelly* (2006) 40 Cal.4th 106.) “[T]o qualify for resentencing under the new shoplifting statute, the trial court must determine whether defendant entered ‘a commercial establishment with intent to commit larceny while that establishment [was] open during regular business hours,’ and whether ‘the value of the property that [was] taken or intended to be taken’ exceeded \$950. (§ 459.5.)” (*People v. Contreras* (2015) 237 Cal.App.4th 868, 892 (*Contreras*).) Here, the value of the property Clark attempted to steal — \$4,274.74 — disqualifies him from resentencing under sections 459.5 and 1170.18. (See *Contreras, supra*, at p. 892; *People v. Shabazz* (2015) 237 Cal.App.4th 303, 309.) Clark has been adequately represented by counsel at every stage of the proceedings.

DISPOSITION

The order denying Clark’s petition for resentencing is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.